Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1904

MARIA AGUILAR, ET AL.,

*Petitioners,*

—v.—

GRIFFIN B. BELL, ET AL.,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS DISTRICT OF COLUMBIA CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. _____

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MARIA AGUILAR, et al.,

Petitioners,

v.

GRIFFIN B. BELL, et al.,

Respondents.

---

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioners, MARIA AGUILAR, LINDA HORTON, RELLA JACKSON and DEMERIS OGLETREE, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals entered in this case on April 15, 1977, motion for rehearing ~~denied~~ on May 18, 1977.

## Opinions Below

The opinion of the United States Court of Appeals, which is unreported, is set out in Appendix A. The order of the United States Court of Appeals denying petitioners' motion for rehearing is set out in Appendix B.

The opinion of the United States District Court, which is unreported, is set out in Appendix C. The order of the United States District Court denying petitioners' motion to amend the judgment and order of dismissal is set out in Appendix D.

## Jurisdiction

The judgment of the United States Court of Appeals was entered on April 15, 1977. A timely motion for rehearing was denied on May 18, 1977. This petition for writ of certiorari was filed within ninety (90) days of the latter date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

## Question Presented

Can federal officials, by conditionally releasing four young women offenders who have sued them for excluding women from youth

offender facilities in violation of the Federal Youth Corrections Act and the Constitution, then successfully claim that the entire case is moot, including the claims not only of the four named plaintiffs, but even the claims of the class of the other young women they represent, where:

(1) on conditional release the four young women, like all other youth offenders, continue to remain in the custody and under the supervision and control of the Attorney General, and are still subject to the rules and regulations of the Bureau of Prisons;

(2) the federal officials continue to exclude women, including members of the class, from youth offender facilities and insist they have the right to do so; and

(3) the average youth offender is conditionally released before she has had time fully to litigate the exclusion of herself and other young women from youth offender facilities, thus making the issue capable of repetition, yet evading review.



## Statutory Provisions Involved

The Federal Youth Corrections Act, 18 U.S.C. § 5005 et seq. is set out in Appendix E.

## Statement of the Case

The petitioners, four young women, were sentenced under the Federal Youth Corrections Act 1/ and committed for training and treatment to the Kennedy Youth Center, Morgantown, West Virginia, one of the five facilities in the federal prison system certified for youth offenders. That Center had the distinction of being one of the two co-correctional youth facilities in the country, that is, occupied by both male and female youth offenders.

1/ 18 U.S.C. §5005, et seq. Three of the women were sentenced under 18 U.S.C. § 5010(b). The computerized information system at the District of Columbia Superior Court indicates that the fourth woman, Rella Jackson, was sentenced to a five year term under 18 U.S.C. §5010(c). But because §5010(c) expressly excludes sentences under six years, we assume for the purpose of this petition that she was sentenced under §5010(b).

On February 14, 1975, federal officials notified all women at the Center that the Center would soon be closed to women and that some of them would be transferred to adult prisons. 2/

On May 12, 1975, the four young women filed suit against the Attorney General and officials of the United States Bureau of Prisons, complaining, inter alia, that the government was violating the Youth Corrections Act, the Administrative Procedure Act 3/ and

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2/ In a memorandum informing women inmates that co-corrections would be discontinued at the Center, the KYC warden stated: "For those who ... do not make parole or have an up-coming mandatory release, there will be some transferring to other Institutions. Our alternative institutions for transfers at this time are: Pleasanton, Calif.; Fort Worth, Texas; Lexington, Ky.; Alderson, W. Va.; Terminal Island, Calif.; and Washington, D. C... ..." Except for Pleasanton, these institutions are adult prisons.

3/ 5 U.S.C. §§551-59, 701-06, 1305, 3105, 3344, 6362, 7562. Petitioners claimed that the decision to close the Kennedy Youth Center to women and co-mingle women youth offenders with adult offenders was rule-making and did not comply with the Act.



the due process clause of the fifth amendment to the Constitution 4/ by establishing a national policy of (1) intermingling youth and adult offenders; and (2) incarcerating female youth offenders in adult prisons while confining male youth offenders in youth-approved facilities.

On June 26, the four women moved to amend the complaint so that they might represent women youth offenders as a class and also moved to certify the class.

On June 30, just four days later, Demeris Ogletree and Linda Horton were conditionally released. This was followed by the conditional release of Rella Jackson on August 1 and Maria Aguilar on August 15. On August 22, one week after the last petitioner was conditionally released, the government filed a motion to dismiss the case as moot.

There is little doubt what triggered this rapid release of all four petitioners. For example, in March 1975, only two months before suit was filed, prison officials informed all four

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4/ There were two due process claims: sex discrimination and failure to grant a hearing before transfer.

young women they were being transferred to adult prisons. In May 1975, before suit was filed, the government denied Linda Horton a release date; the following month, after suit was filed, she was conditionally released. The district court dismissed the case as moot and the court of appeals affirmed.

* * * * *

The purpose and function of the Youth Corrections Act is central to petitioners' claims. Congress passed the Act in 1950 when it became convinced that confining young people with hardened criminals only fueled the spiraling crime rate. The purpose of the Act was to create special institutions, patterned after the English Borstal system, which segregated youth offenders from adult criminals and offered youths individual programs appropriate to their needs. 5/ Persons convicted of a federal offense prior to their twenty-second birthday are eligible for sentencing under the Act.

While adult penology is based on retribution 6/, deterrence, rehabilitation and security 7/, the goals of the Youth Corrections

5/ H.R. Rep. No. 2979, U.S. Code Cong. Serv., 81st Cong., 2d Sess. 3985-89; 18 U.S.C. § 5014, as amended 1970.

6/ Carlson, For Your Information, In Federal Prison Facilities, Bureau of Prisons (1976).



Act are training and treatment. 8/ Legislative history buttresses the congressional mandate:

> The underlying theory of the bill is to substitute for retributive punishment methods of training and treatment designed to correct and prevent anti-social tendencies. It departs from the mere punitive idea of dealing with criminals and looks primarily to the objective of rehabilitation. 9/

To achieve these ends, the Act requires the Director of the Bureau of Prisons to:

> . . . designate, set aside, and adapt institutions . . . for treatment. Insofar as practical, such institutions . . . shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders . . .

18 U.S.C. § 5011.

The Director of the Bureau of Prisons has designated five Federal Correctional

8/ 18 U.S.C. § 5011.

9/ H.R. Rep. No. 2979, U.S. Code Cong. Serv. 81st Cong. 2d Sess. 3985 (1950).

Institutions suitable for youth offenders committed to the custody of the Attorney General for training and treatment. 10/ Of these five, however, only the Federal Correctional Institution at Pleasanton, California, accepts female youth offenders.

As of February 2, 1976, there were 2,389 young men and women sentenced and confined under 18 U.S.C. § 5010(b) and (c) of the Act. 11/ Of these, 2,173 were men and 216 were women. 12/ Of the 216 women committed under the Act, only 38 were at Pleasanton. 13/ The remaining 178 were incarcerated in adult prisons. 14/ Thus, only 17.6% of the women confined under the Act were in certified youth facilities; 82.4% were in adult prisons, contrary to congressional command. The figures for male youth offenders on February 2, 1976,

11/ Compiled from Bureau of Prison's Inmate Information System Profile Data Report for February 2, 1976.

12/ Id.

13/ Id.

14/ Bureau of Prison's Inmate Information System Profile Data Report for February 2, 1976. Alderson, WV (23); Fort Worth, TX (33); Lexington, KY (105); San Diego, CA (1); Terminal Island, CA (16): Total (178).



were dramatically different. 34.6% (751) of the men were confined in certified youth facilities 15/ and 55.6% (1208) in young adult facilities. 16/ Therefore, a total of 90.2% (1959) male youth offenders were confined in youth or young adult facilities, while only 9.8% (214) were incarcerated in adult prisons.

Petitioners brought this suit to challenge the wholesale exclusion of women from federal youth offender facilities. Both the district court and the court of appeals held this case moot in the face of long-standing doctrine of this Court to the contrary. Petitioners now ask this Court to grant the petition for writ of certiorari and summarily reverse.

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15/ Note 10, supra.

16/ Compiled from Bureau of Prison's Inmate Information System Profile Data Report for February 2, 1976.

## Reasons for Granting the Writ

1. In refusing to find this case non-moot, the District of Columbia Circuit blatantly ignored adherence to the fundamental doctrine which has been enunciated by this Court at least since United States v. W.T. Grant Co., 345 U.S. 629 (1952), that "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot." Id. at 682.

In deciding the case the way it did, the District of Columbia Circuit simply ignored W.T. Grant and its progeny 17/ which identify four prerequisites which must be established in order to defeat a claim of mootness, where, subsequent to suit, the plaintiff is no longer subjected to the conduct deemed objectionable: 1) the apparent mootness is the result of the defendant's voluntary action; 2) defendant denies that the conduct about which plaintiff complains is wrong; 3) there is a reasonable expectation the wrong will be repeated; and 4) public interest demands a resolution of the dispute.

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17/ See United States v. Concentrated Phosphate Export Assn., 393 U.S. 199 (1968); Gray v. Sanders, 373 U.S. 368 (1963).



This case readily meets these prerequisites. 1) Respondents first decided to transfer petitioners and other women youth offenders from Kennedy Youth Center to adult prison facilities while informing them that they were not eligible for conditional release. When petitioners sued to block their transfers, within weeks, respondents sought to escape litigation by conditionally releasing petitioners. It was thus respondents' voluntary actions which gave the appearance of mootness to the case. 2) Respondents deny that co-mingling convicted youth offenders with adult offenders violates either the Youth Corrections Act or the Constitution:

> [W]e submit that the decision to transfer...the plaintiffs...does not violate the Youth Corrections Act. Plaintiffs contend that maintaining the Kennedy Youth Center for males only while placing females in "adult" facilities is an invidious discrimination of the fifth amendment. We emphatically disagree. 18/ (Emphasis added.)

3) The third element of W.T. Grant is that the "defendant...demonstrates that 'there

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18/ Defendants Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Preliminary Injunction at 13-14.

is no reasonable expectation that the wrong will be repeated.' The burden is a heavy one." 345 U.S. at 633. As was pointed out to the court of appeals, petitioner Ogletree has been arrested and convicted subsequent to her conditional release and is now in prison serving sentence for credit card theft. With what has happened to petitioner Ogletree since her conditional release, the respondents are in no position to meet their heavy burden. 4) Petitioners continue to assert what respondents deny--violations of the Youth Corrections Act and the fifth amendment. The public interest surely requires a resolution of so serious a dispute.

Voluntary governmental action--conditional release--undergirds the claim of mootness. Yet the exclusion of most women from federal youth offender centers persists and is defended. Petitioners, particularly Ms. Ogletree, have not heard the last of this exclusionary policy. The disposition of this case by the court of appeals represents such a serious departure from applicable decisions of this Court, that the decision below should be summarily reversed with a per curiam opinion directing the court of appeals' attention to United States v. W.T. Grant Co., supra.



2. The District of Columbia Circuit supported dismissal on mootness ignores the class action holding in Sosna v. Iowa, 419 U.S. 393 (1975) and conflicts with recent decisions of several other circuits 19/ which have applied Sosna in similar settings.

In Sosna v. Iowa, supra, this Court held that if the named plaintiffs' claim becomes moot prior to class certification, the certification date can relate back to the date of the filing of the complaint. 419 U.S. at 542 n. 11. In that event the controversy can continue "between a named defendant and a member of the class represented by the named plaintiff, even though the claim of the named plaintiff has become moot." Id. at 402. Sosna excepts those cases which become moot before the district court "can reasonably be expected to rule on a certification motion." Id. at 542 n. 11. In this case petitioners' class action certification motion was filed June 26, 1975. On June 30, 1975, just four days later, respondents conditionally released petitioners Ogletree and Horton. Petitioners Jackson and Aguilar were conditionally released on August 1 and 15, respectively. On August 22, 1975 respondents filed their opposition to the motion for class certification and a

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19/ Frost v. Weinberger, 515 F.2d 57 (2d Cir. 1975); McGill v. Parsons, 532 F.2d 484 (5th Cir. 1976). Inmates of San Diego County Jail v. Duffy, 528 F.2d 954 (9th Cir. 1975); Zurak v. Regan, 550 F.2d 86 (2d Cir. 1977).

corresponding motion to dismiss on grounds of mootness. Accordingly, this chronology demonstrates that the case became "moot" before the district court could have even ruled on the pending motion to certify the class. The district court did not even have the respondents opposition to the class motion until seven days after the case became "moot" when the last remaining named petitioner was conditionally released. Despite this telling chronology of events which led to the district court's order of dismissal on grounds of mootness, the court of appeals disregarded the holding of Sosna:

> The average confinement of persons sentenced under the Youth Corrections Act is of sufficient duration that, if any of them were commingled with adult prisoners, an action could be prosecuted, and certainly a class action could be commenced and certified, before release of the named plaintiffs. This would preserve the claims against any objection based on mootness. (App. infra p. 4a)

This reasoning demonstrates such an elementary misunderstanding of the "relation back" doctrine enunciated by Mr. Justice Rehnquist in Sosna, supra at 542 n. 11, when measured against the factual chronology of the aforementioned proceedings, leading to the district court's order of dismissal



on grounds of mootness, to again warrant summary reversal on this petition.

## Conclusion

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1433 September Term, 1976

Maria Aguilar, et al., Civil 75-760
Appellants

v.

Griffin B. Bell, in his capacity as Attorney General of the United States of America, et al

Appeal from the United States District Court for the District of Columbia.

Before: TAMM, LEVENTHAL and MacKINNON,
Circuit Judges

JUDGMENT

THIS cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

ON consideration thereof IT IS ordered and adjudged by this Court that the judgment ---
----------of the District Court appealed from in this cause is hereby affirmed, for the reasons set forth in the attached memorandum.



Per Curiam
For the Court

Filed April 15, 1977

George A. Fisher
Clerk

Aguilar v. Bell
(Judges Tamm, Leventhal and MacKinnon)

MEMORANDUM

We affirm the judgment dismissing this case.

Once the government in good faith released the four individual plaintiffs from the Kennedy Youth Center, no viable claim remained. None of them have ever been co-mingled with adult offenders. The possibility that any of them will be so treated in the future is remote and speculative. Particularly in light of the absence of any prior experience of confinement of these individuals with adults, this court cannot render an opinion on possibilities projected by plaintiffs.

Nor can plaintiffs challenge the confinement policy of the Attorney General simply by virtue of their status as conditionally released offenders. The focus of their challenge is significantly different from that of the plaintiffs in Ramer v. Saxbe, 522 F.2d 695 (D.C. Cir. 1975), who sought rule-making procedures for regulations governing release situations as well as confinement situations. 522 F.2d at 703. Plaintiffs in this action challenge only confinement practices, and since they were on release status the district judge correctly concluded that they were not currently subject to or threatened by such possible confinement practices.



We turn to plaintiffs' contention that a controversy survives with respect to the alleged class. The District Judge ruled: "Since the named plaintiffs do not have a 'real and immediate' threat of injury, they cannot be representative of the class." We see no basis for reversal on the ground that plaintiffs' claims are sufficiently representative of those of the alleged class to gain vitality from any continuing controversy between that class and the Attorney General. Plaintiffs' experiences as potential transferees do not typify those of young female offenders currently confined with adult prisoners, and would not provide concrete examples for any litigation concerning that class. Plaintiffs claims cannot therefore be enlivened by their tenuous relationship to the claims of the alleged class.

Lastly, the issues raised by the individual plaintiffs are not "capable of repetition, yet evading review." Such a contention requires a realistic appraisal of the circumstances. Sosna v. Iowa, 419 U.S. 393, and see fn. 11 (1975). The average confinement of persons sentenced under the Youth Corrections Act is of sufficient duration that, if any of them were commingled with adult prisoners, an action could be prosecuted, and certainly a class action could be commenced and certified, before release of the named plaintiffs. This would preserve the claims against any objection based on mootness. Sosna v. Iowa, supra.

Affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 76-1433 September Term, 1976

Maria Aguilar, et al., Appellants

v.

Griffin B. Bell, in his capacity as Attorney General of the United States of America, et al.

Civil Action 75-760

BEFORE: Tamm, Leventhal and MacKinnon, Circuit Judges

O R D E R

Upon consideration of appellants' motion for rehearing and of their letter to the Clerk dated May 2, citing an additional authority, it is

ORDERED by the Court that appellants' motion is denied.

FOR THE COURT:

GEORGE A. FISHER, Clerk

Filed May 18, 1977



APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARIA AGUILAR, et al.,
Plaintiffs,
v.
EDWARD H. LEVI, et al.,
Defendants

C.A. No. 75-760

O R D E R

This matter is before the Court on plaintiffs' motion for leave to file an amended complaint, plaintiffs' motion to proceed as a class action, and defendants' motion to dismiss this action as moot. Numerous affidavits have been submitted which indicate that all four named plaintiffs have been released on parole. While it is true that even though on parole the plaintiffs will be subject to "the rules and regulations of the Bureau of Prisons," Ramer v. Saxbe, 522 F.2d 695, 703 (D.C.Cir. 1975), this case is distinguishable from Ramer since this Court finds it unlikely that the named plaintiffs will in the future be subject to the challenged decisions and actions of the defendants. Weinstein v. Bradford, ___ U.S. _____, 18 Cr.L. 4113 (Dec. 10, 1975). Since

the named plaintiffs do not have a "real and immediate" threat of injury, they cannot be representative of the class. Sosna v. Iowa, ____ U.S. ____, 95 S.Ct. 553, 559 (1975). Nor can it be said that the "circumstances' of this case require that the class be certified at this time so that the questions presented will not evade review. Id. at 559 n.11. Any proposed member of the class sought to be certified who has been injured or who is threatened with "real and immediate" injury by the allegedly illegal actions of the defendants can bring suit, and can do so in a timely fashion. Thus, since this Court cannot certify this action as a class action under Sosna, and since the claims are not such that they will evade review, and since the named plaintiffs have not demonstrated a "real and immediate" threat of injury, this action must be deemed moot.

On the basis of the foregoing, it is, by the Court, this 9th day of January, 1976,

ORDERED, that the plaintiffs' motions for leave to amend the complaint and to proceed as a class action be, and the same hereby are, denied; and it is

FURTHER ORDERED, that defendants' motion to dismiss on the ground of mootness be, and the same hereby is, granted; and it is

FURTHER ORDERED, that the instant case be, and the same hereby is, dismissed.



Charles R. Richey
United States District
Judge

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| MARIA AGUILAR, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| v. | ) | Civil Action |
| | ) | No. 75-760 |
| EDWARD H. LEVI, et al., | ) | |
| | ) | |
| Defendants. | ) | |

O R D E R

This matter is before the Court on plaintiffs' motion to amend the judgment and order of dismissal entered in this case on the 9th day of January, 1976. The Court has carefully considered the plaintiffs' memorandum in support of their motion and finds that the arguments presented were previously considered by the Court. Further, the Court is not now persuaded that it was in error for the reasons set forth in the Memorandum Opinion accompanying the order of dismissal. While this Court finds it unnecessary to respond to each of the plaintiffs' arguments, it would point out that plaintiffs misread this Court's use of the Supreme Court decision in Weinstein v. Bradford, _____ U.S. _____, 95 S.Ct. 347 (1975). In Weinstein, the procedure in



question had a palpable application to respond therein, whereas plaintiffs in the instant action can only point to a "substantial interest in the administration of the Youth Act." This Court found and still finds that plaintiffs lack a reasonable expectation of future application of the rules in question. Even if Weinstein merely represents one further fencepost marking the boundaries of the limited jurisdiction of the federal courts, plaintiffs have nevertheless passed that boundary. Wherefore, it is, by the Court, this 29th day of March, 1976,

ORDERED, that plaintiffs' motion to amend the judgment and order of dismissal entered in this case on the 9th day of January, 1976, be, and the same hereby is, denied.

Charles R. Richey
United States District
Judge

APPENDIX E

18 UNITED STATES CODE
§5010(b)(c)(e):

Sentence

(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Division as provided in section 5017(c) of this chapter; or

(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Division prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until dis-



charged by the Division as provided in section 5017(d) of this chapter.

(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Division shall report to the court its findings.

18 UNITED STATES CODE
§5011:

Treatment

Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used

only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

18 UNITED STATES CODE
§5014:

Classification studies and reports

The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Division a report of its findings with respect to the youth offender and its recommendations as to his treatment. At least one member of the Division, or an examiner designated by the Division, shall, as soon as practicable after commitment, interview the youth offender,



review all reports concerning him, and make such recommendations to the Director and to the Division as may be indicated.

18 UNITED STATES CODE
§5015(a):

Powers of Director as to placement of youth offenders

(a) On receipt of the report and recommendations from the classification agency the Director may --

(1) recommend to the Division that the committed youth offender be released conditionally under supervision; or

(2) allocate and direct the transfer of the committed youth offender to an agency or institution for treatment; or

(3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.

18 UNITED STATES CODE
§5017

Release of youth offenders

(a) The Division may at any time after

reasonable notice to the Director release conditionally under supervision a committed youth offender. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Division.

(b) The Division may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

(c) A youth offender committed under section 5010(b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

(d) A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.



(e) Commutation of sentence authorized by any Act of Congress shall not be granted as a matter of right to committed youth offenders but only in accordance with rules prescribed by the Director with the approval of the Division.

18 UNITED STATES CODE
§5020:

Apprehension of released offenders

If, at any time before the unconditional discharge of a committed youth offender, the Division is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility any member of the Division may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youth offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given an opportunity to appear before the Division, a member thereof, or an examiner designated by the Division. The Division may then or at its discretion revoke the order of conditional release.

Supreme Court, U. S.
FILED
OCT 17 1977
MICHAEL RODAK, JR., CLERK

No. 77-190

# In the Supreme Court of the United States

OCTOBER TERM, 1977

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MARIA AGUILAR, ET AL., PETITIONERS

*v.*

GRIFFIN B. BELL, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORATI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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## BRIEF FOR THE RESPONDENTS IN OPPOSITION

---

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# In the Supreme Court of the United States

OCTOBER TERM, 1977

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No. 77-190

MARIA AGUILAR, ET AL., PETITIONERS

*v.*

GRIFFIN B. BELL, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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**BRIEF FOR THE RESPONDENTS IN OPPOSITION**

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## OPINIONS BELOW

The memorandum opinion of the court of appeals (Pet. App. A) and the orders of the district court (Pet. Apps. C, D) are not reported.

## JURISDICTION

The judgment of the court of appeals (Pet. App. A 1a-2a) was entered on April 15, 1977. A petition for rehearing was denied on May 18, 1977 (Pet. App. B). The petition for a writ of certiorari was filed on August 3, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether the district court properly dismissed as moot petitioners' civil action seeking declaratory and injunctive relief to prevent their transfer from a co-correctional Federal Youth Corrections Act facility and its conversion to an all-male facility.

## STATEMENT

On May 12, 1975, petitioners, who were then inmates of the Robert F. Kennedy Youth Center at Morgantown, West Virginia, filed the instant action in the United States District Court for the District of Columbia against the Attorney General, the Director and Regional Director of the Bureau of Prisons, and the warden of the center (Pet. 5). Petitioners contended that the conversion of the center to an all-male institution, and their transfer to institutions housing adults, would violate the Federal Youth Corrections Act (18 U.S.C. 5005, *et seq.*), the Administrative Procedure Act (5 U.S.C. 551, 553) and the Fifth Amendment (Pet. 5-6). They sought a declaration of the illegality of the proposed action and an injunction prohibiting (1) their transfer to another institution without a prior hearing, (2) conversion of the Kennedy Center to an all-male institution, or (3) any commingling of adult and youth offenders by the Bureau of Prisons.[1]

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[1]The determination to discontinue the Kennedy Youth Center as a co-correctional facility (*i.e.*, one with both male and female prisoners) was based upon two factors. First, because of the extreme disproportion between the number of male and female youth offenders, the male facilities (including the male wing of Kennedy) were operating over capacity, while the female wing of Kennedy was operating substantially under capacity. Second, the co-correctional concept did not work well in practice at Kennedy, primarily because the physical design of the center made adequate supervison to prevent unauthorized sexual encounters between male and female inmates extremely difficult (Joint Appendix ("J.A.") filed in the court of appeals, pp. 101-105).



On June 26, 1975, petitioners moved to amend their complaint to make it a class action representing "all female individuals who are now or will be sentenced under the Federal Youth Corrections Act and committed for treatment to the custody of" the Attorney General and the Director of the Bureau of Prisons, and also moved to certify the class (Pet. 6).

At a hearing on June 27, 1975, on petitioners' motion for a preliminary injunction, the parties, under the guidance of the district court, concluded a series of agreements whereby petitioners Horton and Ogletree were conditionally released as of June 30 and petitioner Jackson was given a medical furlough to her home in Washington, D.C., for the purpose of a kidney transplant donation to her sister (Tr. 12-13).[2] After the hearing the parties also agreed that petitioner Aguilar would be transferred to a community treatment center near her home in New Jersey. Petitioners Jackson and Aguilar were conditionally released on August 1 and August 15, 1975, respectively.

On August 22, 1975, respondents filed an opposition to petitioners' motions to amend their complaint and proceed as a class action; they also moved to dismiss the action on grounds of mootness. The district court granted respondents' motion to dismiss and denied petitioners' motions on January 9, 1976 (Pet. App. C), and it subsequently reaffirmed its ruling (Pet. App. D). The court of appeals affirmed (Pet. App. A).

## ARGUMENT

1. Petitioners' suit was properly dismissed as moot. When, as a result of a defendant's voluntary action, a plaintiff is no longer subject to allegedly illegal conduct, and the plaintiff has no reasonable expectation that

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[2]"Tr." refers to the transcript of the June 27 hearing.

he or she will thereafter be subject to the conduct complained of, the claim lacks the necessary immediacy and reality to warrant declaratory relief and is therefore moot. *Preiser* v. *Newkirk*, 422 U.S. 395, 402-403; see *Weinstein* v. *Bradford*, 423 U.S. 147, 148-149. The same standard applies to a claim for injunctive relief, which is moot if there is " 'no reasonable expectation that the wrong will be repeated.' " *United States* v. *W.T. Grant Co.*, 345 U.S. 629, 633. Moreover, even if a claim for injunctive relief is not technically moot, relief will be denied unless the plaintiff can show "some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive"; and the determination of the trier of fact regarding the likelihood of future violations must be upheld absent "a strong showing of abuse" and "no reasonable basis" for the refusal. *Id.* at 633-634.

Petitioners have made no such showing here. They sought declaratory and injunctive relief to prevent their transfer to institutions housing adult inmates, and their conditional releases achieved this objective and rendered the case moot. Contrary to petitioners' assertions (Pet. 12-13), they have " 'no reasonable expectation that the wrong will be repeated.' " See *United States* v. *W.T. Grant Co., supra*, 345 U.S. at 633. The possibility that petitioners will be returned to custody pursuant to the Federal Youth Corrections Act, and then be subjected to imprisonment with adults, is, at most, remote and speculative at this time.[3]

Accordingly, the district court correctly dismissed the suit, finding it "unlikely that the named plaintiffs will in the future be subject to the challenged decisions and actions of the defendants" (Pet. App. C 6a; see also Pet. App. D 10a).

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[3]Contrary to petitioners' contentions (Pet. 12-13), the situation is not significantly different as regards petitioner Ogletree. After her release and the dismissal of this case she was convicted on state charges for which she received a five-year sentence, and a federal detainer was filed with the State. Ogletree's Federal Youth Corrections Act sentence—and hence the detainer—expires on August 23, 1979, well before the end of her five-year state sentence. Even if she were to be paroled while the detainer remained in force, her conditional release would not necessarily be revoked, nor would she necessarily be assigned to an adult institution.



2. Petitioners also contend (Pet. 14-16) that even if their individual claims are moot, there is still a live controversy between respondents and the class petitioners seek to represent. They contend that the dismissal of their action conflicts with both this Court's decision in *Sosna* v. *Iowa*, 419 U.S. 393, and with the decisions of various courts of appeals applying *Sosna* (Pet. 14 and n. 19). In *Sosna* the Court held that a class challenge to a one-year residency requirement could still present a live controversy as to the remainder of the certified class represented by the named plaintiff although her individual case had become moot before the conclusion of appellate review.

The Court expressly emphasized that this principle applies where (1) there is a live case or controversy both at the time the complaint is filed and at the time the class is certified, and (2) "the alleged harm would * * * dissipate during the normal time required for resolution of the controversy * * *." 419 U.S. at 402. Here, however, the essential prerequisite has not been met, because no class had been certified prior to the time petitioners' individual claims were mooted. To the contrary, the court in this case specifically denied petitioners' motion for the case to proceed as a class action (Pet. App. C 7a).

Petitioners argue, however, citing footnote 11 of the *Sosna* opinion, that in the circumstances of this case their claims were rendered moot before the district court had an opportunity to rule on their certification, and that the time

of certification should be "relate[d] back" to the filing of their initial complaint (Pet. 14). Footnote 11 in *Sosna* states (419 U.S. at 402):

> There may be cases in which the controversy involving the named plaintiffs is such that it becomes moot as to them before the district court can reasonably be expected to rule on a certification motion. In such instances, whether the certification can be said to "relate back" to the filing of the complaint may depend upon the circumstances of the particular case and especially the reality of the claim that otherwise the issue would evade review.

In *Gerstein* v. *Pugh*, 420 U.S. 103, 110-111 n. 11, for example, the Court observed that the relation back doctrine might appropriately be applied to a class of pretrial detainees because pretrial custody is of a brief and uncertain duration and may terminate at any time; and thus "[i]t is by no means certain that any given individual, named as plaintiff, would be in pretrial custody long enough for a district judge to certify the class."

But this case is quite different, as the court of appeals correctly held (Pet. App. A 4a):[4]

> [T]he issues raised by the individual plaintiffs are not "capable of repetition, yet evading review." Such a contention requires a realistic appraisal of the circumstances. *Sosna* v. *Iowa*, 419 U.S. 393, and see

[4]There is no conflict with the court of appeals cases cited by petitioners (Pet. 14 n. 19), each of which involves circumstances where the claim of any named plaintiff would likely become moot before a class could be certified. *McGill* v. *Parsons*, 532 F. 2d 484 (C.A. 5), like *Gerstein* v. *Pugh*, *supra*, involved pretrial detainees. And in *Inmates of San Diego County Jail* v. *Duffy*, 528 F. 2d 954 (C.A. 9), the court expressly found that inmates stayed in the facility in question an average of only 7.65 days. In *Zurak* v. *Regan*, 550 F. 2d 86 (C.A. 2), certiorari denied, No. 76-1564, June 27, 1977, the case was in fact certified as a class action, but not until after it had become moot. The court of appeals found that the district court had



> fn. 11 (1975). The average confinement of persons sentenced under the Youth Corrections Act is of sufficient duration that, if any of them were commingled with adult prisoners, an action could be prosecuted, and certainly a class action could be commenced and certified, before release of the named plaintiffs. This would preserve the claims against any objection based on mootness.

This case is thus a far cry from one involving a class of persons such as the pretrial detainees in *Gerstein* v. *Pugh*, *supra*, where any individual may be a member of the class for only a few days.

The mere fact that the named plaintiffs in this case were conditionally released before the court ruled upon the class certification—indeed before the respondents filed their opposition to class certification—does not establish that the claim is inherently one that will become moot "before the district court can reasonably be expected to rule on a certification motion." This fact affords no basis for finding that the claim is one that will "evade review" unless certification is viewed as relating back.

Moreover, petitioners' repeated suggestion (Pet. 6-7, 12, 14) that respondents granted their conditional releases

unaccountably delayed for almost a year in ruling on the certification motion and also noted that because "of the relatively short periods of incarceration involved" (the usual sentence was for no longer than one year) "and the possibility of conditional release" (which could be applied for after only 60 days' incarceration) "there was a significant possibility that any single named plaintiff would be released prior to certification." 550 F. 2d at 91-92. Finally, in *Frost* v. *Weinberger*, 515 F. 2d 57 (C.A. 2), certiorari denied *sub nom. Frost* v. *Mathews*, 424 U.S. 958, plaintiffs claimed that a hearing was required before reduction of social security benefits; since a hearing was given after reduction, the question of the right of a pre-reduction hearing would again likely have become moot as to any named plaintiff before the class action issue could be determined.

in order to moot their claims and thus avoid judicial resolution, and that they will do so again in future cases, is disingenuous and unsupported by the record. The releases in this case resulted from negotiations conducted under the guidance of the district court between petitioners' own counsel and counsel for the government parties.[5]

3. Finally, the facts of this case make it a particularly unsuitable one in which to permit a class suit to continue despite the fact that the claims of the named plaintiffs have become moot even before certification. Petitioners here have not established that they could have adequately represented the class they described even if their individual claims had not become moot at the time of their releases. Although they sought to represent all females "who are now or will be sentenced under the Federal Youth Corrections Act and committed for treatment to the custody of" the Attorney General and the Director of the Bureau of Prisons, petitioners' complaint was based in

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[5]In fact, when the proposed conversion of the youth center to an all-male institution was first announced to the female inmates, the latter were informed that wholesale transfers to other institutions were not contemplated, but rather that conversion would be achieved primarily through attrition as female inmates completed their sentences or achieved conditional release. In the case of transfers, moreover, every effort would be made to place the inmate at the institution of her choice (J.A. 105-112). The facts regarding the release of each of the petitioners, are discussed *supra* at. p. 3.

The record amply supports the court of appeals' conclusion (Pet. App. A 3a) that the government acted in "good faith" in releasing petitioners. Moreover, petitioners' contention that their conditional releases were intended to moot their suit is irrelevant, since they obtained the relief for which they sued, preventing their transfer from the Kennedy Youth Center to an institution housing adults. Conditional release more than achieved this limited objective.



large measure on the specific facts regarding their objections to the conversion of the Kennedy Youth Center to an all-male institution.

The class petitioners seek to represent, in contrast, includes female youth offenders whose circumstances vary widely, including some who are presently assigned to adult facilities and who may have formed satisfactory educational and community ties to those institutions; females who have not yet been sentenced and have formed no ties to any correctional institution; and females who are being held at state facilities, halfway houses or have achieved conditional release. Clearly petitioners' particularized complaint has not demonstrated that they can represent the myriad interests of all those in this large category, and indeed now that petitioners have been conditionally released they have little in common with the class. Nevertheless, petitioners seek the right to litigate broad and abstract questions of public and administrative policy in which they have little or no personal stake. Class suit certification is not available for such a purpose. See *Schlesinger* v. *Reservists to Stop the War*, 418 U.S. 208.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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